account although "it would be quite improper . . . . to do other than loyally follow" *Ravenshear's* case, and then he went on to say:—

"I think that there is just sufficient — but, in my judgment, only just — to say that there are special circumstances which would justify the court in this case in granting the application sought."

As I understand the position, what was said in the judgment in *Macadam's* case represents the very farthest limits to which the principles of *Ravenshear's* case have been stretched, and, accepting these limits, I think I am bound to say that in the present case the present applicants have failed to bring themselves within them.

Accordingly the application will have to be dismissed with costs. The matter, of course, can come at a later stage before the full Court and no one will be happier than myself if I am held to be wrong.

Application dismissed.

In re T. A. S. SANMUGAM PILLAY, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) March 22, 1951]

[K.L. — Letters of Administration No. 18 of 1950]

Probate and Administration Enacment s. 24(iii) — Whether an unregistered purchaser should or could petition for distribution or administration — "Creditor" — Meaning of.

Sanmugam was the proprietor of six lots of land, valued at $16,000 and charged to the Planters' Loans Board for $5,000 and interest; he sold the land, subject to the charge, to a married woman named Annaratnam for $11,000 in cash, she undertaking to pay off the charge. She went into actual possession of the land. The Board knew nothing of this arrangement at the time and it was contrary to the terms of the charge.

Sanmugam died. He left no other estate in Malaya; his next-of-kin declined to apply for letters of administration and consented to a grant to the purchaser.

In the petition, the six lots were scheduled as assets at their full value and the liabilities were stated to be the charge and the purchase money. On the face of the petition the purchaser was shown as a creditor for the amount of cash which she had paid.

The Registrar ascertained the true position by further enquiry and referred to a Judge the question whether the petitioner was a creditor within the meaning of the Enactment and competent to petition as such.

Notice was given to the Loans Board but they did not wish to be heard.

Held, that a purchaser of land, whose title has not been registered before the death of his Vendor, is a creditor of the deceased within the meaning of the Probate and Administration Enactment (Cap. 8).

PETITION for Letters of Administration.

Petitioner in person.

Cur. Adv. Vult.

Taylor, J. : — The petition was wrongly drawn. What the petitioner may be entitled to, and what she really claims, is not the money but a clean title to the land. I therefore ordered the petition to be amended by stating the assets as "a bare registered interest in the lands comprised in" . . . . (the respective titles) and the liabilities as nil, (except for administration expenses).

It may well be that from the point of view of the Loans Board the estate of the deceased is liable to them on the charge but the petitioner must state the position as between herself and the deceased. She undertook to pay off the charge and therefore it is now her liability not his. Also he was never liable to refund the purchase money. He sold the land outright and put the purchaser in possession. Neither he nor his representatives have any further beneficial interest in the land so there are no substantial assets in the estate. There is no debt in money outstanding and therefore there are no substantial liabilities. The estate consists of nothing but the bare registered interest in the land and the only liabilities are for estate duty and administration expenses. How then can it be said that the petitioner is a creditor of the estate?

This question has general importance at the present time. During the war many smallholders bought and sold lands when it was difficult or impossible for them to effect registration. Some of these vendors and purchasers have since died and in a number of cases there have been differences of opinion between Collectors and Assistant Registrars as to whether an unregistered purchaser should or could petition for distribution or administration. Such a question arises in a variety of circumstances but the present case is typical of many.

The deceased registered proprietor sold all his land and was paid in full. Is the unregistered purchaser a creditor?

Ordinarily a creditor means a person to whom money is owing but this is not exhaustive. Fundamentally the word credit implies belief. When it is said of a witness that his credit is good it means that he can be believed. When it is said of a customer that his credit is good it means that the shopkeeper believes that he can and will pay and therefore supplies goods without immediate payment, that is: — on credit.

Similarly, when a man buys land without a formal transfer he believes that the vendor can and will

execute a registrable transfer in the future. The vendor does not owe the purchaser any money but he does owe him a transfer. The purchaser is in this sense a creditor until completion.

If the purchase money is not paid in full there are mutual credits and debits. The vendor is a creditor for the balance and the purchaser is a creditor for the conveyance. Annaratnam was substantially in this position; she was a creditor of the estate for a conveyance. She was a debtor for the amount of the charge.

The Collector of Estate Duty has a separate point of view of his own. He is allowed by law to levy duty on the registered interest in land, even though the deceased had no beneficial interest, but this caused no difficulty; it merely means that the schedule of assets and liabilities for his purpose is different from that in the petition.

For the reason stated I am of the opinion that an unregistered purchaser, even though no money debt is outstanding, is a creditor within the meaning of section 24(iii) of the Probate and Administration Enactment, Chapter 8 and, the next-of-kin having renounced, letters of administration may be granted to her accordingly.

The word "creditor" must have the same meaning in section 179. Where a deceased proprietor has sold his land and his family are untraceable or do not apply for distribution the purchaser may apply and the Collector can deal with the case on its merits. I have lately so ruled on a reference by one of the Collectors for Selangor but as the point of law was exactly the same it is not necessary to deliver a separate judgment.

Order accordingly.

KEE BAN CHENG v. TABAYASHI TOYOJI AND ANOR.

[Orig. Civ. Juris. (Jobling, J.) March 29, 1951]

[Penang — Civil Suit No. 72 of 1950]

Dealings in Land (Occupation Period) Ordinance, 1949 s. 12 — Sale under duress — Vendor and Purchaser — Constructive Notice — Conveyancing and Law of Property Ordinance (Cap. 118), s. 70.

In this case the plaintiff sold a plot of land with a dwelling house thereon, to the first defendant for the sum of $10,000/- Japanese currency on 1st November, 1943. In July, 1945 the first defendant agreed to sell the premises for $30,000/- Japanese currency to one Toh Chooi Nai who in turn agreed to sell them to the second defendant for $5,000/- Malayan currency. On 26th July, 1945 an agreement for sale was entered into by which, at the request of Toh Chooi Nai, the first defendant agreed to sell the premises to the second defendant and later on 26th August, 1945 a deed of conveyance transferring the property to the second defendant was executed and registered in the Registry of Deeds.

The plaintiff in this case sought to set aside a conveyance dated 1st November, 1943 between himself and the first defendant on the ground that it was obtained by duress and asked for an order for delivery of the premises and the title deeds relating thereto by the second defendant in whose possession they were.

The two issues raised by the facts were first, whether the sale by the plaintiff to the first defendant was made under duress and should be set aside and secondly, if that sale is set aside was the second defendant a **bona fide** purchaser for value without notice and therefore entitled to possession of the premises against the plaintiff.

Held, (1) that on the evidence before the Court that the sale to first defendant was in consequence of the threats by him; and (2) that the circumstances existing in Malaya in July, 1945 were such that should have put any solicitor upon such inquiry as would have led to the discovery that the property would have been improperly obtained and therefore that the purchaser, by reason of the fact that the knowledge of the defect in the title should have come to the notice of the Solicitor, was not a **bona fide** purchaser without notice.

Case referred to :—

(1) *Bailey v. Barnes* (1894) 1 Ch. p. 25.

WITNESS ACTION.

C. D. D Hogan for the plaintiff.

T. E. Conaghan and *Mrs. Oon* for the second defendant.

The first defendant was not served.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Jobling, J. : — In this Suit the plaintiff seeks to set aside a conveyance dated 1st November, 1943 between himself and the first defendant on the ground that it was obtained by duress and asks for an order for delivery of the premises and the title deeds relating thereto by the second defendant in whose possession they are.

It appears from the evidence that plaintiff sold the property in question, a plot of land with a dwelling house thereon, to the first defendant for the sum of $10,000/- Japanese currency on 1st November, 1943 and that in July, 1945 the first defendant agreed to sell the premises for $30,000/- Japanese currency to one Toh Chooi Nai who in turn agreed to sell them to the second defendant for $5,000/- Malayan currency. On 26th July, 1945 an agreement for sale was entered into by which, at the request of Toh Chooi Nai, the first defendant agreed to sell the premises to the second defendant and later on 26th August, 1945 a deed of conveyance transferring the property to the second defendant was executed and registered in the Registry of Deeds. This conveyance being executed after 12th August, 1945 is void under Section 12 of the Dealings in Land (Occupation Period) Ordinance, 1949. The